admitting a hearsay statement. The proper mode for the plaintiff to have gotten this statement in evidence would have been to call the defendant, who wrote the statement, as a witness; then if he had testified differently from what he had reported to the commercial agency, the plaintiff could have introduced these former statements to contradict such testimony. *Kelley* v. *Jay*, 79 Hun 539.

EVIDENCE—ADMISSION OF A CARBON COPY OF A CONTRACT AS A DUPLICATE ORIGINAL.—A carbon copy of a contract was offered in evidence as a duplicate original. *Held*, this facsimile was a duplicate original and could be admitted to prove the contract without first accounting for the non-production of the top sheet. *International Harvester Company of America* v. *Elfstrom* (1907), — Minn. —, 112 N. W. Rep. 252.

This is a novel question and would seem to be in conflict with the rule, that the terms of a document must be proved by the production of the document itself. There is an exception to this rule, however, in the case of a notice, which if made by writing it out twice at the same sitting, and one is retained and the other sent, the one retained can be used without accounting for the non-production of the one delivered. WIGMORE, EVIDENCE, § 1234. The court seems to base its opinion on *Chesapeake & Ohio Railway Co.* v. *F. W. Stock & Sons*, 104 Va. 97, 51 S. E. Rep. 161. But in this case the question was not decided, as no satisfactory proof was given that the letter was a carbon copy, made up at the same time and by the same impression of type as was the letter that was sent. Although the court did say, that if the same had been proved, it would have been sufficient. But the most important fact to be noticed in this latter case is that the letter was a *notice* of loss to the defendant, as provided by the bill of lading, thus coming within the exception above mentioned. It is true the court did not base its opinion on this exception, but in support of the same it cited *Hubbard* v. *Russell*, 24 Barb. 404, which was also a case of a duplicate of a written notice, i. e., a notice to defendant, which was necessary by rules of substantive law to establish defendant's liability for a nuisance. In the principal case the court distinguishes between this case and letter-press copies, which are not duplicate originals. *Nodin* v. *Murray*, 3 Camp. N. P. 228; *Spottiswood* v. *Weir*, 66 Cal. 525; WIGMORE, EVIDENCE, § 1234. But it seems that the same objection would apply to both, i. e., the legal act as consummated does not embrace both the original and the duplicate. It cannot be fairly said that parties to a contract do contemplate that this fac-simile made by a chemical process is to be a duplicate original.

FEDERAL COURTS—JURISDICTION—ACTION AGAINST STATE OFFICERS.—Where an act of the state of Arkansas provides that foreign corporations shall not do business in the state until they have complied with certain requirements as to filing of articles of incorporation, payment of fees, etc., and provides a penalty of $1,000 for refusal to comply with the act, which penalty is to be recovered by the prosecuting attorneys of the state for the benefit of the counties where suit is brought, except that one-fourth of the recovery is to

belong to the prosecuting attorney for his compensation, *held,* that a suit against the prosecuting attorneys of the seventeen judicial districts of the state to restrain them from instituting any proceedings to recover penalties for refusal to comply with the act on the ground that it was unconstitutional, was in effect a suit against the state, within Const. U. S. Amend. 11, and therefore that the court was without jurisdiction. *Western Union Telegraph Co.* v. *Andrews et al.* (1907), — C. C., E. D., Ark., W. D. —, 154 Fed. Rep. 95.

The opinion states that "no action can be maintained against a state, when the state, though not named in the pleadings, is the real party against which relief is asked"; also, "the state is the real party when the relief sought is that which enures to it alone." The decision turns finally upon the point that the prosecuting attorneys collectively represent a client—the state, and that an attorney cannot be enjoined from bringing a suit when the court confessedly has no jurisdiction over his client. Where injunctions have been sought against state officers not acting as attorneys, the federal courts have generally held that the court had jurisdiction. A suit against the auditor general of a state to restrain him from acting under a statute alleged to be unconstitutional is not a suit against the state. *Western Union Telegraph Co.* v. *Henderson,* 68 Fed. 588. Nor is a suit against a state supervisor of registration to restrain him from carrying out the provisions of a state statute. *Mills* v. *Green,* 67 Fed. 818. The federal courts have jurisdiction to enjoin state officers from obeying state laws declared to be unconstitutional. *Claybrook* v. *City of Owensboro,* 16 Fed. 297. The United States Supreme Court has held that the prohibition to sue a state does not extend to a case in which the state is not a party on the record even if the state is alone interested in the subject of the suit. *Osborn* v. *Bank of United States,* 22 U. S. (9 Wheat.) 738, 6 L. Ed. 204. A suit against the Bank of the Commonwealth of Kentucky was not a suit in which a state was a party even though it be sole proprietor of the stock of the bank. *Bank of Kentucky* v. *Wister,* 27 U. S. (2 Pet.) 318. A suit by or against a governor of a state in his official character as such, is a suit against the state. *Kentucky* v. *Dennison,* 65 U. S. (24 How.) 66. A suit against railroad commissioners of a state to restrain them from enforcing their regulations as unjust and unreasonable, the state having no direct pecuniary interest therein, is not a suit against a state. *Reagan* v. *Farmers' Loan and Trust Co.,* 154 U. S. 362. The weight of authority seems to be against the ruling in the principal case. A determination of the entire question involved is expected in the final disposition of the North Carolina railway cases.

FOREIGN CORPORATIONS—LIABILITY TO BE SUED.—Plaintiff, a resident policyholder of a foreign insurance company, sues for his share of the surplus profits. Defendant insurance company had a capital stock and stockholders. A plea to jurisdiction was filed. *Held,* plaintiff, being a creditor and not a member, could sue. *Peters* v. *Equitable Life Assur. Soc.* (1907), — Mass. —, 81 N. E. Rep. 964.

The decision rests on the well-known principle that courts do not take jurisdiction where plaintiff seeks to sue a foreign corporation in his right as